

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA	:	
	:	
v.	:	CR No. 04-00105-WES
	:	
THOMAS GAFFNEY	:	

**REPORT AND RECOMMENDATION**

Lincoln D. Almond, United States Magistrate Judge

This matter has been referred to me pursuant to 28 U.S.C. § 636(b)(1)(B) and 18 U.S.C. § 3401(i) for proposed findings of fact concerning whether Defendant is in violation of the terms of his supervised release and, if so, to recommend a disposition of this matter. In compliance with that directive and in accordance with 18 U.S.C. § 3583(e) and Fed. R. Crim. P. 32.1, a revocation hearing was held on March 14, 2022, at which time Defendant, through counsel and personally, admitted he was in violation of his supervised release conditions. At that hearing, I ordered Defendant remain released pending final sentencing before District Judge William E. Smith.

Based upon the following analysis and the admission of Defendant, I recommend that Defendant's supervised release be modified to impose a period of six months' home confinement with electronic monitoring.

**Background**

On July 6, 2021, the Probation Office petitioned the Court for the issuance of a summons. On that date, the District Court reviewed the request and ordered the issuance of a summons. On March 14, 2022, Defendant appeared before the Court for a revocation hearing at which time he admitted to the following charges:

**Violation No. 2. Mandatory Condition. Defendant must not commit another federal, state, or local crime.**

On June 30, 2021, Defendant committed the offenses of DUI of Liquor/Drugs – Blood Concentration Unknown (misdemeanor) and Refusal to Submit to Chemical Test – second offense (misdemeanor), as evidenced by the Rhode Island State Police Arrest Report and Sixth Division District Court Case No. 61/21-06236.

At the March 14, 2022 hearing, the Government made an oral motion to amend the Violation Petition as follows:

**Violation No. 1. Mandatory Condition. Defendant must not commit another federal, state, or local crime.**

On July 17, 2020, Defendant committed the offense of Simple Assault and Battery as evidenced by his plea of nolo contendere to that misdemeanor charge in Providence County Superior Court on March 10, 2022.

As Defendant has admitted these charges, I find he is in violation of the terms and conditions of his supervised release.

**Recommended Disposition**

Title 18 U.S.C. § 3583(e)(2) provides that if the Court finds that Defendant violated a condition of supervised release, the court may extend the term of supervised release if less than the maximum term was previously imposed. The maximum term of supervised release is life.

Title 18 U.S.C. § 3583(e)(3) provides that the Court may revoke a term of supervised release and require the Defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on post release supervision, if the Court finds by a preponderance of evidence that the defendant has violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be sentenced to a term beyond 5 years if the instant offense was a Class A felony, 3 years for a Class B felony, 2

years for a Class C or D felony, or 1 year for a Class E felony or a misdemeanor. Defendant was on supervision for a Class A felony. Therefore, he may not be required to serve more than five years' imprisonment upon revocation.

Section 7B1.1 provides for three grades of violations (A, B, and C). Subsection (b) states that where there is more than one violation, or the violation includes more than one offense, the grade of violation is determined by the violation having the most serious grade.

Section 7B1.1(a) provides that a Grade A violation constitutes conduct which is punishable by a term of imprisonment exceeding one year that (i) is a crime of violence, (ii) is a controlled substance offense, or (iii) involves possession of a firearm or destructive device, or (B) any other offense punishable by a term of imprisonment exceeding twenty years. Grade B violations are conduct constituting any other offense punishable by a term of imprisonment exceeding one year. Grade C violations are conduct constituting an offense punishable by a term of imprisonment of one year or less; or (B) a violation of any other condition of supervision.

Section 7B1.3(a)(1) states that upon finding of a Grade A or B violation, the Court shall revoke supervision. Subsection (a)(2) states that upon finding of a Grade C violation, the Court may revoke, extend, or modify the conditions of supervision. Defendant has committed a Grade C violation. Therefore, the Court may revoke, extend, or modify the conditions of supervision.

Pursuant to § 7B1.3(d), any restitution, fine, community confinement, home detention, or intermittent confinement previously imposed in connection with the sentence for which revocation is ordered that remains unpaid or unserved at the time of revocation shall be ordered to be paid or served in addition to the sanction determined under § 7B1.4 (Term of Imprisonment), and any such unserved period of confinement or detention may be converted to an equivalent period of imprisonment. There is no outstanding restitution, fine, community confinement, home detention, or intermittent confinement.

Section 7B1.4(a) provides that the Criminal History Category is the category applicable at the time the Defendant was originally sentenced. Defendant had a Criminal History Category of VI at the time of sentencing.

Should the Court revoke supervised release, the Revocation Table provided for in § 7B1.4(a) provides the applicable imprisonment range. Defendant committed a Grade C violation and has a Criminal History Category of VI. Therefore, the applicable range of imprisonment for this violation is eight to fourteen months.

Should the Court find that Defendant has committed a Grade B or C violation, § 7B1.3(c)(1) states that where the minimum term of imprisonment determined under § 7B1.4 is at least one month, but not more than six months, the minimum term may be satisfied by (A) a sentence of imprisonment; or (B) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in § 5C1.1(e) for any portion of the minimum term. Should the Court find that the defendant has committed a Grade B or C violation, § 7B1.3(c)(2) states that where the minimum term of imprisonment determined under § 7B1.4 is more than six months but not more than ten months, the minimum term may be satisfied by (A) a sentence of imprisonment; or (B) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in § 5C1.1(e), provided that at least one-half of the minimum term is satisfied by imprisonment. Neither of these provisions apply to this matter.

Title 18 U.S.C. § 3583(h) and § 7B1.3(g)(2) provide that when a term of supervised release is revoked and the defendant is required to serve a term of imprisonment that is less than the maximum term of imprisonment authorized, the Court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute

for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release. The authorized statutory maximum term of supervised release is life.

Section 7B1.5(b) provides that, upon revocation of supervised release, no credit shall be given toward any term of imprisonment ordered, for time previously served on post-release supervision.

### **Analysis and Recommendation**

This is Defendant's third (and hopefully final) violation case. Defendant completed a lengthy drug trafficking sentence and was released on a reduced sentence on December 15, 2016. His initial transition to the community was rocky and unstable. However, according to Probation, Defendant is currently in a much more stable position, and he has worked hard to improve his situation.

These current violations involve new misdemeanor criminal convictions. Defendant has accepted responsibility for both offenses before this Court and the state court. The parties have worked hard over the last few months to globally resolve these federal violations and the underlying state assault charge in a way that reflects their seriousness but also acknowledges that it would be counter-productive to Defendant's progress to incarcerate him at this time for these two instances of poor judgment. As a global sanction, the parties propose that Defendant serve a period of six months on home confinement with electronic monitoring. On balance, I agree with the parties and adopt their proposed sanction as reasonable.

### **Conclusion**

After considering the various factors set forth in 18 U.S.C. § 3553(a), I recommend that Defendant's supervised release be modified to impose a period of six months' home confinement with electronic monitoring.

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of Court within fourteen days of its receipt. LR Cr 57.2; Fed. R. Crim. P. 59. Failure to file specific objections in a timely manner constitutes a waiver of the right to review by the District Court and the right to appeal the District Court's Decision. United States v. Valencia-Copete, 792 F.2d 4 (1<sup>st</sup> Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603 (1<sup>st</sup> Cir. 1980).

/s/ Lincoln D. Almond  
LINCOLN D. ALMOND  
United States Magistrate Judge  
March 16, 2022